90-1220

Supreme Court, U.S.
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No. _____

In The
SUPREME COURT OF THE UNITED STATES
Term, 1991

SAM POLUR,
Petitioner,

- against -

HYMAN RAFFE, A.R. FUELS, INC., IRA POSTEL, P.C., FELTMAN, KARESH, MAJOR, & FARBMAN, ESQS., DONALD F. SCHNEIDER, ESQ., ALVIN F. KLEIN, Justice of the Supreme Court, State of New York, County of New York, DAVID H. EDWARDS, Justice of the Supreme Court State of New York, County of New York, DONALD F. DIAMOND, Special Referee of the Supreme Court State of New York, County of New York,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question 1. WHETHER THE COURTS BELOW UNLAWFULLY APPLIED THE FULL FAITH AND CREDIT STATUTE AND FURTHER DEPRIVED PETITIONER OF HIS CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS FOR REDRESS OF GRIEVANCES IN VIOLATION OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION AND PRECEDENT CASE LAW FROM THIS UNITED STATES SUPREME COURT?

Question 2. WHETHER THE "MOST LITIGATED CASE" IN NEW YORK STATE COURT HISTORY CAN BE BROUGHT TO ALLEGED FINALITY THROUGH THE WHOLESALE DESTRUCTION AND DEPRIVATION OF THE RIGHT TO ACCESS TO THE COURTS OF AN UNNAMED PARTY TO ANY OF THOSE PROCEEDINGS?

Question 3. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT COULD TOTALLY IGNORE THE MANDATES OF THIS COURT'S RULINGS IN MIGRA V. WARREN, 465 U.S. 75 (1984) AND ALLEN V. McCURRY, 499 U.S. 90 (1980), REGARDING APPLICATION OF THE FULL FAITH AND CREDIT STATUTE AND GIVE THIS COURT'S RULINGS THEREIN AN ALTOGETHER DIFFERENT MEANING AND EFFECT THAN WAS ARTICULATED AND MANIFESTLY INTENDED?

Question 4. COULD THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT NOT REMAND THE CASE TO THE UNITED STATES DISTRICT COURT, STANTON, J., REQUIRING THE DISTRICT COURT TO EXAMINE, DE NOVO, THE RECORD OF THE STATE COURT PROCEEDING WHEREIN PETITIONER CLAIMS THERE WAS NO FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUES PRESENTED, AS MANDATED BY THIS COURT IN MIGRA AND ALLEN V. McCURRY PRIOR TO GRANTING PRECLUSIVE EFFECT TO THE STATE COURT JUDGMENT UNDER THE FULL FAITH AND CREDIT STATUTE?

Question 5. WHETHER FULL FAITH AND CREDIT, RES JUDICATA OR COLLATERAL ESTOPPEL MAY BE APPLIED TO PROTECT A STATE COURT JUDGMENT ISSUED BY A COURT LACKING BOTH SUBJECT MATTER AND IN PERSONAM JURISDICTION?

Question 6. CAN THE UNITED STATES COURT OF APPEALS IGNORE PETITIONER'S DOCUMENTED CHARGES THAT EXTORTION OF MONIES IN EXCESS OF $2.5 MILLION IN THE GUISE OF ALLEGED LEGAL FEES FROM ONE HYMAN RAFFE, WAS LARCENOUSLY ACHIEVED WITHOUT COURT ORDER IN FURTHERANCE OF USE OF THE STATE SUPREME COURT AS AN ENTERPRISE FOR RICO PURPOSES?

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Opinions Below

The Decision and Order of the New York Supreme Court, Edwards, J., dismissing petitioner's complaint, Index No. 17481/86, dated October 16, 1987; opinion and order of the United States District Court, Southern District of New York, Stanton, J., dismissing petitioner's complaint, Index No. 88-2514, dated July 17, 1989; opinion and order of the United States Court of Appeals for the Second Circuit, affirming, in part, and modifying, in part, the order of the District Court, Stanton, J., dated August 22, 1990; the order of the United States Court of Appeals for the Second Circuit, denying reargument, dated October 26, 1990. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

Constitutional Provisions Involved

The following provisions of the United States Constitution are involved:

First Amendment Right to Petition the Courts for Redress of Grievances;

Fifth Amendment Right to Not Be Deprived of Liberty or Property Without Due Process of Law;

Fourteenth Amendment Rights to Not Be Deprived of Liberty, Life or Property Without Due Process And Equal Protection of The Law.

Jurisdiction

The Order of the United States Court of Appeals for the Second Circuit denying permission to reargue the order affirming the dismissal of petitioner's complaint in the United States District Court, Southern District of New York, Stanton, J., was entered on October 26, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254, subdivision (1).

Statement

Petitioner, on or about December 14, 198 was duly retained by respondent Hyman Raffe ("Raffe") for the limited purpose of acting as substitute counsel for Raffe in an action related to the dissolution of Puccini Clothes, a private company of which Raffe was one of the founders-incorporators, as then counsel-of-recor George Sassower ("Sassower") had been disqualified from representing Raffe in Puccini related matters.

On April 10, 1985 Sassower served a summons on Michael J. Gerstein, Esq. of the lawfirm of Kreindler & Relkin, commencing a lawsuit unde Index No. 9522/85. Service was had in the New York County Supreme Court, outside the courtroom of Justice Ethel Danzig, in the presence of Davi Cook, Assistant Attorney General State of New York, and respondent Donald Schneider, on behalf of the Feltman, Karesh & Major lawfirm.

On April 11, 1985 respondent Schneider on behalf of the said lawfirm, thereafter filed a motion in the New York County Supreme Court seeking to hold responds Raffe and Sassower

and petitioner in contempt with the false allegation that petitioner had served him with a summons in violation of an order of the New York County Supreme Court, Ira Gammerman, J.

Respondent Schneider attached, as an exhibit to his motion papers, the very same summons that had been served on Gerstein by Sassower as evidenced by Gerstein's initials on the summons.

Oral argument on the motion was scheduled and had before respondent Justice Klein ("Klein") on May 29, 1985, the purpose of which was to determine whether a fact finding evidentiary hearing on the motion for non-summary criminal contempt should be had. Instead, on July 1, 1985 respondent Klein issued a ruling and order finding petitioner guilty of criminal contempt and sentencing him to 30 days in jail and payment of a $25.00 fine to be paid to the respondent Feltman, Karesh, Major & Farbman, Esqs. ("FKMF"). WE HAD AN ORAL ARGUMENT ON A MOTION, A "TAKING UNDER ADVISEMENT" BY THE

COURT, AN ODIOUS "FINDING OF CRIMINAL CONTEMPT" (sic!), THEREUPON WITHOUT A SCINTILLA OF DUE PROCESS OR EQUAL PROTECTION OF LAW!

There was no Special Proceeding initiated as mandated by law under Article 4 of the New York Civil Practice Law and Rules; nor was an evidentiary hearing with a full panoply of rights for the accused convened. Petitioner was jailed and made to serve the 30 day jail term for an alleged crime he did not commit.

As petitioner was not a named party in the underlying action, 9522/85, New York County, he was not given lawful notice of the criminal contempt proceedings and therefore tried without the indispensible accusatory instrument that our Constitution requires. He was imprisoned without trial, convicted without evidence, without presentation of testimony under oath and without cross examination of his accusers, Judicially ordered to pay monetary fines to private attorneys, and criminally tried by knowingly false affidavits.

On or about June 10, 1985 respondent Donald F. Diamond ("Diamond"), Special Referee of the New York County Supreme Court issued a "report" that he and respondents FKMF and Schneider characterized as a judgment wherein petitioner was assessed $12,500.00 in "costs". (sic!) Respondents FKMF and Schneider thereafter on September 17, 1985 took this knowingly false "judgment" to petitioner's bank and thereby restrained and attached his bank account and created chaos and shame with petitioner's credit.

On or about May 15, 1986, the Appellate Division, First Judicial Department ruled that the Diamond "paper" was indeed only a "report", not a judgment.

Though petitioner made numerous attempts to overturn the false conviction he was never given access to the courts by way of an evidentiary hearing to look into the underlying facts and the contentions advanced by petitioner. Every court has affirmed with no opinion -- either dismissed on appeal or denied certiorari.

On April 15, 1986 petitioner appeared before Justice Ira Gammerman in the New York State Supreme Court on a motion by respondents FKMF and Schneider to again hold petitioner in criminal contempt for allegedly violating the January 23, 1985 Gammerman order through instituting an Article 78 proceeding to clear his name and vacate the false conviction for contempt. It was at that time that Justice Gammerman ruled that petitioner could sue FKMF and Schneider and also go to the Grievance Committee regarding their alleged unethical conduct. Justice Gammerman made it clear to respondents FKMF and Schneider that the January 23, 1985 order did not pertain to petitioner, especially where he was suing individually and defensively.

On or about August 9, 1986 petitioner commenced an action in the New York State Supreme Court, County of New York, Index No. 17481/86,against respondents FKMF, Schneider, Klein and others. Said action was assigned to respondent David Edwards, Jr. ("Edwards").

Respondents FKMF & Schneider made a motion to dismiss that action as being barred by the Gammerman order and also to hold petitioner in criminal contempt for once again allegedly violating the Gammerman order. On or about October 16, 1987, in secrecy and without notice to petitioner, respondent Edwards, in a decision ruled that the action was dismissed as being barred by the Gammerman injunction order. The motion to hold petitioner in contempt was held in abeyance. To this date no order was ever signed or entered to the knowledge of petitioner. Nor has a judgment been made and entered. Respondent Edwards knew of the April 15, 1986 ruling of Justice Gammerman at the time he ruled to dismiss petitioner's case before him (Edwards) and he also knew that the Gammerman order did not pertain to Polur as an individual. Respondent Edwards did not provide an evidentiary hearing. He did not even provide oral argument on the motion to dismiss.

On or about December 9, 1987 petitioner commenced an action in the United State District

Court for the Southern District of New York alleging violations of his civil rights under 42 U.S.C. Section 1983 against the respondents FKMF, Schneider and Klein. Said action was assigned to Hon. Mary Johnson Lowe, United States District Court Judge. Respondents FKMF and Schneider once again made a motion to dismiss on the grounds that the action was barred by collateral estoppel and by the January 23, 1985 Gammerman injunction order. Thereafter, Judge Lowe ruled that petitioner was barred from bringing the action against FKMF and Schneider pursuant to the principles of collateral estoppel pursuant to the New York State Court ruling of respondent Edwards that the action was barred by the January 23, 1985 Gammerman injunction order. Nothing could be further from the truth. Judge Lowe's ruling was a ruling by judicial ukase. Judge Lowe ruled arbitrarily without argument.

Petitioner filed a motion pursuant to Federal Rules of Civil Procedure, Rule 59(e) to alter, amend and vacate the judgment and

order of Judge Lowe. Within said motion petitioner outlined the knowingly false assertions made by Edward Weissman, attorney for FKMF and Schneider, that the Gammerman order barred petitioner from bringing an individual, defensive suit against FKMF and Schneider. Petitioner also brought out the fact that Weissman was present in the courtroom before Justice Gammerman on April 15, 1986 when Justice Gammerman explicitly and unequivocally ruled that petitioner was authorized to bring suit against FKMF and Schneider and that he could also file grievances with the Grievance Committee.

Judge Lowe, despite the uncontrovertible facts brought to her attention, once again ruled against petitioner.

On or about April 22, 1988 petitioner read an article in the New York Law Journal by Martin Fox concerning what this seasoned law editor characterized as the most litigated case in New York State Court history. Also,

in the same edition of the New York Law Journal was a published "report" of respondent Diamond concerning legal fees and other sanctions to be imposed upon respondent Raffe in regard to actions and proceedings commenced in his (Raffe's) name by Sassower, without the authority of Raffe. Within that "report" it was noted that Raffe had signed a stipulation which in effect, at the direction of respondent Diamond, made respondent Diamond a New York State Supreme Court Justice (sic!). It was through the Martin Fox article and the published "report" of respondent Diamond in the New York Law Journal that petitioner first gleaned the intricacies of the plot to falsely accuse him (petitioner) of non-summary criminal contempt, incarcerate him in order to "get him out of the picture", then extort Raffe for what has amounted to over Three Million ($3,000,000.00) Dollars to this date.

Respondents' tactics were to "silence" petitioner, the only honest attorney and officer of the court involved in the matters, and thereafter literally "rape" the Puccini assets and extort Raffe, a shareholder in

Puccini, in order for Raffe not to go to jail for the non-summary criminal contempt conviction. Interestingly, all of the assets of Puccini were divided amongst the attorneys and accounting firm; including the receiver Lee Feltman, and his lawfirm respondent FKMF. NOT ONE CENT WENT TO ANY OF THE FOUR SHAREHOLDERS.

Petitioner thereafter filed suit in the United States District Court for the Southern District of New York, alleging not only Civil Rights violations under 42 U.S.C. Section 1983, but also RICO violations under 18 U.S.C. Sections 1961, et seq., alleging Mail Fraud, Extortion, Wire Fraud and Obstruction of Justice.

Said case was assigned to Hon. Louis Stanton, United States District Court Judge, under docket no. 88-2514. Judge Stanton, without granting a hearing or even oral argument on a motion by respondents FKMF and Schneider to dismiss, did dismiss petitioner's claims and also issued an order barring petitioner from further suing respondents in the Federal courts.

Said order of dismissal was made and entered on July 17, 1989. Judgment was entered on July 21, 1989.

Petitioner filed notice of appeal with the United States Court of Appeals for the Second Circuit on or about August 29, 1989. Said appeal was orally argued before a three-judge panel of that court on or about May 29, 1990. That court affirmed the District Court order of dismissal on or about August 22, 1990.

Petitioner thereafter filed a motion for reargument before the Court, en banc. Said motion was denied on or about October 26, 1990. The present petition for Certiorari to this Court thereafter ensued.

Preliminary Statement for Granting the Writ

THE FEDERAL COURTS BELOW HAVE USED THE FULL FAITH AND CREDIT STATUTE TO FURTHER DEPRIVE PETITIONER OF HIS FIRST AMENDMENT RIGHT TO PETITION THE COURTS FOR REDRESS OF GRIEVANCES

Initially, and throughout the period from April 1985 to the present date, there have been multiple actions by the private attorney-respondents herein in tandem with Justice Klein and Justice Edwards and Appellate Court acquiesence which effectively prevented your petitioner from exercising his Constitutional right to petition the courts for redress of grievances.

The Constitutional right to petition the Courts would indeed be a hollow right if the right to be heard, under oath, to face your accuser(s) in a criminal action or civil matter, as herein, and every other fundamental safeguard included in our Bill of Rights, is not commensurate with and attendant to the Right to Petition.

It will be conclusively demonstrated hereinafter that the Constitutional right to petition the Courts has been rendered a hollow "right" where, as herein, the right to be heard has been still-born; it never achieved viable status. The Bill of Rights safeguards were wantonly abjured and stealthily withheld. Furthermore, the Full Faith and Credit Statute has been wrongfully used herein to further the cause of violating petitioner's rights to petition the courts, in stark violation of this Court's mandated precedents in Migra v. Warren City School District Bd. of Education, 465 U.S. 75 (1984) and Kremer v. Chemical Construction Corp., 456 U.S. 75.

The "Right to Petition for Grievances" became and consistently remained a mere footnote to history insofar as the Courts of the State of New York and the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit are concerned.

The Circuit Court of Appeals below upheld Judge Stanton's dismissal in the District Court for the Southern District on the grounds that petitioner's First and Third Claims were barred by Res Judicata and Collateral Estoppel. The Second Circuit Court went on to cite this Court's decision, Migra v. Warren City School Dist. Bd. of Education, 465 U.S. 75, 81 (1984), in support of its affirmance of Judge Stanton's ruling. However, close attention to what this Court's ruling therein holds reveals that decision is in petitioner's favor totally.

In discussing preclusion law and the Full Faith and Credit Clause, this Court, in Migra, supra, stated:

> It is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered. In Allen v. McCurry, 449 U.S. 90 (1980),

this Court clearly enunciated:

> "Indeed, though the federal courts may look to the common law or to the policies supporting res judicata and collateral estoppel in assesing the preclusive effect of decisions of other federal courts, Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so..."
> Id., at 96, 101 S.Ct., at 415.

This Court, in Migra, supra, went on to hold that "Ohio state preclusion law is to be applied to this case. Prudence also dictates that it is the District Court, in the first instance, not this Court, that should interpret Ohio preclusion law and apply it." supra, 465 U.S., at 81.

This Court's precedent required the Circuit Court to remand the case back to Judge Stanton in the District Court in order for Judge Stanton to apply New York State preclusion law to the case at bar.

New York State law requires that two basic

elements be satisfied in order for collateral estoppel to apply: 1) the identity of an issue necessarily ruled in the prior action with one which is decisive of the present action, and 2) that there was a full and fair opportunity to contest the issue in the prior action (see Gilberg v. Barbieri, 53 N.Y.2d 285, 441 N.Y.S. 2d 49, 423 N.E.2d 807).

New York law goes further to state that "collateral estoppel effect will only be given to matters 'actually litigated and determined' in a prior action," Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449, 456, 492 N.Y.S.2d 584, 589 (citing Restatement (second) of Judgments, sec. 27, quoted in Koch v. Consolidated Edison Co., 62 N.Y.2d 548. (other citations omitted) "If the issue is not actually litigated, there is no identity of issues between the present action and the prior determination. An issue is not actually litigated if, for example, there has been a default, a confession of liability, a failure to place a matter in issue by proper pleadings or even because of a stipulation." Kaufman, supra, at 457, 492 N.Y.S.2d at 589.

In the instant matter, the jurisdictional failures in the Klein Court, together with the pleadings failing to conform to CPLR Section 401, et seq., and the attendant lack of a due process hearing and any litigation at all, no issues at all were ever litigated. In that regard there can be no identify of issues.

The second prong of the collateral estoppel test is the full and fair opportunity to litigate the issues. It has already been demonstrated conclusively, without there ever being a dispute in any court, that petitioner never had any opportunity to litigate any issue, much less a full and fair opportunity.

New York Courts have fashioned their own test to determine whether a full and fair hearing was had. New York requires first, that "where the party againt whom collateral estoppel is asserted claims that he was not afforded a full and fair opportunity in the prior administrative proceeding to contest the decision now said to be controlling, he must be allowed to do so." Ryan v. New York Telephone Co., 62 N.Y.

2d 494, at 501.(emphasis added) The Ryan Court continued:

> A determination whether the first action or proceeding genuinely provided a full and fair opportunity requires consideration of the 'realities of the (prior) litigation', including the context and other circumstances which*** may have had the practical effect of discouraging or deterring a party from fully litigating the determination which is now asserted against him."(People v. Plevy, 52 N.Y.2d 58, 65, 436 N.Y.S.2d 224.) Among the specific factors to be considered are the nature of the forum and the importance of the claim in the prior litigation, the incentive to litigate and the actual extent of litigation, the competence and expertise of counsel, the availability of new evidence, the differences in the applicable law and the foreseeability of future litigation. (Gilberg v. Barbieri, 53 N.Y.2d. 282, 292; Schwartz v.Public Administrator, 24 N.Y.2d 65, 72.

The Ryan Court, after applying the foregoing rules of law to that case, went further: It stated that "an examination of the prior pro-

ceeding itself shows that both requisite criteria, the identicality and decisiveness of the issues and the opportunity for a full and fair hearing have been satisfied." Ryan, supra, at 502.

The District Court Judge, Stanton, did not apply New York law in determining the res judicata and collateral estoppel issues in order to assess Full Faith and Credit protections, nor did the Circuit Court of Appeals below require it to do so, as mandated by this Court in Migra, supra, and Allen v. McCurry. The criminal contempt "proceeding" before Justice Klein has never been examined. Such an examination would reveal the total abnegation of the Constitution and the rights of petitioner herein. There, of course, never was a hearing of any sort -- solely an oral argument on a motion to hold petitioner in "criminal contempt" of court. Justice Klein "reserved decision". Some five weeks after that May 29, 1985 "oral argument, Justice Klein had served a written finding of criminal contempt upon petitioner, absent a "finding" (sic!) of guilt

"beyond a reasonable doubt", inter alia. Ryan, Id., unlike petitioner, did have his full and fair opportunity to litigate the issues in his case. He did so, testified himself and cross-examined adverse witnesses through his union representative!

Therefore, as this Court stated in Migra, Judge Stanton had a duty to not only assess New York preclusion law in determining the Full Faith and Credit question, but to also apply it by scrutinizing the record (sic!) of the non-summary criminal contempt proceeding to determine whether the identicality of an actual issue litigated is present; and whether petitioner had a full and fair opportunity to litigate said issue if found therein. Such searching of the record was mandatory, where petitioner had claimed under oath that he was not afforded any opportunity - much less a full and fair opportunity to litigate an issue. (Ryan, supra, 62 N.Y.2d at 501) And petitioner has demonstrated - without any rebuttal - that such was the case.

Petitioner has satisfied his burden of "establishing the absence of a full and fair - (or any!) - opportunity to litigate the issue in a prior action or proceeding." Schwartz v. Public Administrator, supra, at p.73, 298 N.Y.S.2d 955.

Further analysis of New York preclusion law brings us to a case virtually on point with the case at bar. In Vavolizza v. Krieger, 33 N.Y.2d 351, 352 N.Y.S.2d 919, at 923, the Court of Appeals stated:

> We held recently in S.T. Grand, Inc. v. City of New York, 32 N.Y.2d 300, 344 N.Y.S.2d 938, that a criminal conviction could serve as collateral estoppel insofar as the same issues were revived in subsequert civil litigation. Emphasis, of course, was placed on the procedural safeguards accorded defendant and the high degree of proof required in order to convict after trial. (emphasis supplied)

If Judge Stanton would have properly analyzed and applied New York preclusion law he would have examined the record of the non-

summary criminal contempt proceeding before Justice Klein adn found it to be bereft of any and all procedural safeguards required by New York and United States law and Constitutions.

The Federal Courts have been consistent in the proper application of the Full Faith and Credit Clause. Judge Carter, SDNY, in Friedman v. N.Y.C. Dept. of Housing and Development Administration, 688 F.Supp. 896, 901, it is stated:

> It has long been recognized that "a judgment is entitled to full faith and credit -- even as to questions of jurisdiction -- when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment."

This was not done herein by Judge Stanton, or any other court. Every court has failed and refused to examine the record of the proceeding on the motion for non-summary criminal contempt.

All other Circuit Courts of Appeals have judiciously followed the mandates of this Court.

The Second Circuit Court of Appeals has even followed precedent Stare Decisis until now when it has deliberately chosen to defy this Court's rulings. In Wilder v. Thomas, 854 F.2d 605 (1988), in speaking about this Court's ruling in Kremer v. Chemical Construction Corp., 456 U.S. 75, The Second Circuit Court of Appeals stated:

> The Court emphasized that in order to qualify for full faith and credit under Section 1738, state proceedings need only satisfy the requirements of due process and be sufficient to be entitled preclusive effect in the courts of that state. Id. at 481, 102 S.Ct. at 1897-98.

In the case at Bar the Second Circuit totally ignored this Court's precedent rulings.

Likewise, in Ruiz v. Comm'r of Dept. of Transp. of City of New York, 858 F.2d 898(1988) the Second Circuit cited Gramatan Home Investors Corp. v. Lopez, 46 N.Y.2d 481, 485, in stating that "The res judicata rule in New York is as follows: (A)s to the parties in a litigation

and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive (in any subsequent action) of the issues of fact and questions of law necessarily decided.'" (emphasis added)

There is no judgment on the merits herein! Merely a ruling by Judicial Ukase. Examination of the underlying record of the proceeding, which Judge Stanton was required to do, would have revealed that there was no judgment on the merits to afford res judicata effect.

The unlawful detention and incarceration of petitioner was never litigated through a due process hearing with all the procedural safeguards required by the U.S. Constitution. This Court, in Townsend v. Sain, 372 U.S. 293 (1963) addressed this issue squarely:

> "State prisoners are entitled to relief on federal habeas corpus only upon proving that their detention violates the fundamental liberties of the person, safeguarded against state action by the Federal Constitution. Simply because detention so obtained is intolerable, the opportunity to be heard, to argue and present evidence, must never be totally foreclosed. See Frank v. Mangum, 237 U.S. 309, 345-350

dissenting opinion of Mr. Justice Holmes) ....." at 757. "Where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in state court, either at the time of the trial or in a collateral proceeding. In other words a federal evidentiary hearing is required unless the state-court trier of fact has after a full hearing reliably found the relevant facts." at 757. (emphasis added)

"This Court has consistently held that state factual determinations not fairly supported by the record cannot be conclusive of federal rights. Fiske v. Kansas, 274 U.S. 380, 385; Blackburn v. Alabama, 361 U.S. 199. Where the fundamental liberties of the person are claimed to have been infringed, we carefully scrutinize the state-court record." at 759.

"However, the obligation of the Federal District Court to scrutinize the state court's findings of fact goes farther than this. Even if all the relevant facts were presented in the state-court hearing, it may be that the fact-finding procedure there employed was not adequate for reaching reasonable correct results. If the state trial judge has made serious procedural errors (respecting the claim pressed in federal habeas) in such things as the burden of proof, a federal hearing is required. Even where the procedure employed does not violate the Constitution, if it appears to be seriously inadequate for the ascertainment of the truth, it is

the federal judge's duty to disregard the state findings and take evidence anew. Of course, there are procedural errors so grave as to require an appropriate order directing the habeas applicant's release unless the State grants a new trial forthwith. Our present concern is with errors which, although less serious, are nevertheless grave enough to deprive the state evidentiary hearing of its adequacy as a means of finally determining facts upon which constitutional rights depend." at 759 (emphasis added)

This Court's ruling makes it clear that the Klein ruling does not deserve recognition of federal protection in determining the facts contested herein by petitioner. Judge Stanton was required to make inquiry into the record of that proceeding, at the least, to determine what recognition, if any, Klein"s order should be accorded in this action.

This Court, moreover, in Kremer, supra, 456 U.S. at 482, stated that Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so, (emphasis added)

Citing Allen v. McCurry, 449 U.S., at 96, this Court went on, in Kremer, supra, to state that "The State must, however, satisfy the applicable requirements of the Due Process Clause. A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment". 456 U.S. at 482.

Such is the case herein. The New York State courts cannot and have not given preclusive effect to either the Klein "judgment" or the Edwards "order". The doctrines of collateral estoppel and res judicata have never been applied to or used against petitioner in the New York courts. The New York courts have just never granted a hearing of any sort, or, where on appeal, written an opinion of any sort addressing themerits of petitioner's claims. Therefore, the Due Process required by the Fifth and Fourteenth Amendments to the United States Constitution has not been fur-

ished to petitioner herein. In that regard, Full Faith and Credit under 28 U.S.C. Section 1738 is not available to the allegedly valid Klein and Edwards rulings.

Such application of the Full Faith and Credit Statute to such constitutionally infirm edicts serves only to further deprive petitioner of the First Amendment right to petition the court for redress of grievances that he initially complained of in both the State and now Federal courts. The application of the Full Faith and Credit Clause to the Klein and Edwards rulings herein by Judge Stanton, and its affirmance by the Second Circuit Court of Appeals, with the attendant injunction against further suing the respondents in the federal court, served to unlawfully slam the doors of all courts, once and for all, on petitioner, under the disguise of finally bringing to a halt the Puccini litigation, characterized as the most litigated case in New York State Court history.

The New York State courts, through a contrivance, and now the federal courts, have wrongfully deprived petitioner of his First Amendment right to petition the courts. Said contrivance is based upon the utter hatred of George Sassower, a since-barred attorney who at one point sued every New York County Supreme Court justice, every justice of the Appellate Division, First Department, and all of the Judges of the Southern and Eastern Districts of the United States District Court. PETITIONER IS NOT SASSOWER!

The opinion of the Second Circuit Court of Appeals was authored by Judge Miner, the same Judge who sat on the panel that reversed United States District Judge Edelstein after Judge Edelstein granted a petition for a writ of habeas corpus in favor of Sassower. (see Appendix) The judiciary in the State of New York detests Sassower. The private-attorney respondents herein have always attempted to make petitioner and Sassower one and the same.

This Court, in Boddie v. Connecticut, 402 U.S. 371, stated:

> Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "(w)herever one is assailed in his person or his property, there he may defend." Windsor v. McVeigh, 93 U.S. 274, 277 (1876). See Baldwin v. Hale, 1 Wall. 223 (1864); Hovey v. Elliot, 167 U.S. 409 (1897). The theme that "due process of law signifies a right to be heard in one's defense," Hovey v. Elliot, supra, at 417, has continually recurred in the years since Baldwin, Windsor and Hovey. Although "(m)any controversies have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), "there can be no doubt that at a mini-

mum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at 313. .....In short, "within the limits of practicability," id., at 318, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause.
Boddie v. Connecticut, 401 U.S. at 377-379

This Court went on further to state:

Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of protected rights although its general validity as a measure enacted in the legitimate excercise of state power is beyond question.....
No less than these rights, the right to a meaningful opportunity to be heard within the limits of practicality, must be protected against denial by particular laws that operate to jeopardize it for particular individuals.
Boddie, supra, at 379-380.

The courts are the only avenue available to petitioner for restoration of his good name and for divesting himself of the false, unlawful and unconstitutional criminal conviction that has scarred him for life.

This Constitutionally protected avenue of redress is tortiously being closed to petitioner through the misapplication of the Full Faith and Credit statute and refusal to honor deference to the precedent case law rulings of this Court. Respectfully, this Court should reverse the erroneous affirmance by the Circuit Court for the Second Judicial Circuit hereinbelow and send an unmistakable message that this petitioner's inviolate Constitutional right to access to the Courts must be honored and adhered to.

CONSTITUTIONAL SAFEGUARDS WERE ESCHEWED FOR PETITIONER HEREIN MANDATING REVERSAL OF THE COURT BELOW

The rights to confront and cross-examine witnesses and to call witnesses in one's own behalf have long been recognized as essential to due process. Mr. Justice Black, writing for the Court in In Re Oliver, 333 U.S. 257, 273 (1948), identified these starkly absent rights not accorded petitioner, as among the minimal essentials of a fair trial:

> "A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense - a right to his day in court - are basic to our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel."

Instructively, not a single cited bedrock safeguard was accorded petitioner! There simply never was a "hearing" of any kind afforded him; merely a motion heard on oral argument by Justice Klein to hold petitioner, Sassower and

Raffe in "criminal contempt of court!" The notice of motion, Index No. 9522/85, New York County Supreme Court nowhere had the name of Sam Polur, as plaintiff or defendant in that cause of action! See, also, Morrisey v. Brewer, 408 U.S. 471, 488-489, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972); Jenkins v. McKeithen, 395 U.S. 411, 428-429, 23 L.Ed.2d 404, 89 S.Ct. 1843 (1969); Specht v. Patterson, 386 U.S. 605, 610, (1967). Both of these elements are implicated in the case at Bar, and more.

It is hornbook law that few rights are more fundamental than that of an accused to present witnesses in his own defense. Webb v. Texas, 409 U.S. 95 (1972); Washington v. Texas, 388 U.S. 14 (1967). PETITIONER HEREIN NOT ONLY WAS PREVENTED FROM PRESENTING WITNESSES IN HIS OWN BEHALF, PREVENTED FROM CROSS-EXAMINING ANYONE -- BUT HE WAS DEPRIVED OF THE RIGHT TO TAKE THE STAND IN HIS OWN RIGHT, WHICH HE AVIDLY SOUGHT AND PROFERRED OVER THE DISMAL SIX-YEAR INTERREGNUM WHEREIN HE HAS FOUGHT THIS OBSCENE

FINDING (SIC!) OF CRIMINAL CONTEMPT.

The Sixth Amendment gives a criminal defendant the right to "be confronted with the witnesses against him." This language "comes to us on faded parchment." Harlan, J., concurring, in California v. Green, 399 U.S. 149, 174 (1970). That lineage was traced back to the beginnings of Western legal culture. It has been said that a form of confrontation was recognized in England well before the right to jury trial. Pollitt, "The Right of Confrontation : Its History and Modern Dress," 8 J.Pub.L. 381, 384-387 (1959).

Many of this Court's assessments of the Confrontation Clause have involved either the admissibility ofout-of-court statements, see, e.g., Ohio v. Roberts, 448 U.S. 56 (1980); Dutton v. Evans, 400 U.S. 74 (1970), or restraints on the scope of cross-examination. Davis v. Alaska, 415 U.S. 380 (1974). This Court has never doubted that the Confrontation Clause guarantees the defendant a face-to-face meeting

with witnesses appearing before the trier of fact. Kentucky v. Stincer, 482 U.S., 370,748, 749-750 (Marshall, J., dissenting).

A CASE OF FIRST IMPRESSION

Here, entombed in a "cannot-be-believed" legal warp, the Circuit Court has refused to recite that petitioner did not have a single hearing, was not afforded a scintilla of due process, was subjected to a "Court" functioning without subject-matter or in personam jurisdiction. These unconstitutional actions come to this Court's attention on an obstructed slate. Highlights of petitioner's brief-in-chief in the Court below are as follows:

(a) Imprisonment without trial;
(b) Conviction without accusatory instrument;
(c) Conviction without evidence being introduced;
(d) Conviction without presentation of evidence;
(e) Conviction without right to confrontation;
(f) Criminal monetary fines made payable to private-attorney litigants;

(g) Criminal prosecution solely by private attorneys-litigants for monetary gain, and not by the Sovereign.

(h) Criminal "trial" solely by affidavit.

(i) Criminal jurisdiction asserted over a non-party to a civil proceeding, to wit, Index No. 9522/85, without service of process upon said non-party.

Notably, petitioner was denied and deprived of elementary Constitutional protections granted to the meanest criminal, to the most vicious and depraved amongst us. As a Social Polity we rightly pride ourselves on each accused individual having his or her fundamental rights scrupulously protected. But the State's Constitutional Tribunal was mute while a member of its own Bar is publicly pilloried and jailed without indictment, hearing, accusation, confrontation, counsel or evidence being submitted to a Judicial Tribunal.

Petitioner's"crime" was indigenous to the Totalitarian State: Representing a then-unpopular client; working with an unpopular and

derided colleague, since disbarred. He became unwittingly, the dupe of both client and colleague as they sought to embroil Petitioner in the dead sins of years-long litigation that petitioner became involved in as a lawyer at "five minutes to midnight." NEARLY FIVE YEARS AFTER THE RAFFE CASE WAS COMMENCED!

There is not a single case in the history of New York State jurisprudence where a criminal defendant was incarcerated without a charge, without a trial, without presentation of evidence, without testimony under oath, without even the feeble confrontation of the least prepared pro se defendant.

It is believed this case is a case of first impression throughout the Unites States of America in that a practicing Attorney is "convicted" of a "criminal act" (sic!) solely on the basis of a motion orally argued before a sitting Justice of the State Supreme Court; a Justice who ruled in direct derogation of this Court authority set out in Bloom v. Illinois, 391 U.S. 192, 201 (1968)., inter alia.

LACK OF SUBJECT MATTER JURISDICTION RENDERS ANY AND ALL ADVERSE RULINGS NUGATORY, AB INITIO

This Court ruled directly to the issue herein regarding subject-matter jurisdiction in Catholic Conference v. Abortion Rights Mobilization, 487 U.S. 722. Assuredly, the Court's ruling in re the District Court lacking subject-matter jurisdiction (in this case it is the Klein "Court") in the underlying suit could not constitutionally be abjured. That case and this case rely on the precise Constitutional underpinnings: (487 U.S., at 724)

> The Conferences objected to issuance of the process, arguing, inter alia, that the District Court lacked subject-matter jurisdiction in the underlying suit. The Court of Appeals for the Second Circuit rejected this argument, ruling that a nonparty witness' jurisdictional challenge is limited to a claim that the District Court lacks even colorable jurisdiction, a standard not met here. We granted certiorari to resolve whether a nonparty witness may defend against a civil con-

> tempt adjudication by challenging the subject matter jurisdiction of the district court. 484 U.S. 975 (1987). We hold the non party witness may raise such a claim, and now reverse. (emphasis added)

This Court wrote directly to the issues herein raised, even although our case is a criminal contempt in lieu of a mere civil contempt impingement on fundamental rights. 487 U.S., at p. 76 stated it well:

> ...the subpoena power of a court cannot be more extensive than its jurisdiction. It follows that if a district court does not have subject-matter jurisdiction over the underlying action, and the process was not issued in aid of determining that jurisdiction, then the process is void and an order of civil contempt based on refusal to honor it must be reversed. As we observed in United States v. Morton Salt Co., 338 U.S. 632, 642 (1950), "(t)he judicial subpoena power not only is subject to specific constitutional limitations;... but also is subject to those limitations inherent in the body that issues

them because of the provisions of the Judiciary Article of the Constitution." Therefore, a nonparty witness may attack a civil contempt citation by asserting that the issuing court lacks jurisdiction over the case. ...The order finding a nonparty witness in contempt is appealable notwithstanding the absence of a final judgment in the underlying action. United States v. Ryan, 402 U.S. 530-532 (1971); Cobbledick v. United States, 309 U.S. 323, 328 (1940).

This Court (p. 77 of 487 U.S.) spoke even more directly to the issues before the Court:

> The challenge in this case goes to the subject-matter jurisdiction of the court and hence its power to issue the order. The distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rests instead on the central principle of a free society that courts have finite bounds of authority, some of constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power. The courts, no less than the political branches of government, must

respect the limits of their authority. (emphasis added)

Finally, in conclusion (487 U.S., at 80):

> Accordingly, on remand, the Court of Appeals must determine whether the District Court had subject-matter jurisdiction in the underlying action. If not, then the subpoenas duces tecum ARE VOID, and the civil contempt citation must be reversed "in its entirety." Mine Workers, supra, at 295. (Emphasis added)

Assuredly, the case at Bar presents a pronouncedly more naked assertion of raw Judicial power, which must be reversed "in its entirety", Id., for the integrity of Constitutional balance and viability! Kamp v. Kamp, 59 N.Y. 212 (1874); CPLR 5015, et seq.; Matter of Levy, 37 N.Y.2d 279 (1983), which speaks to intersticial components of a disciplinary hearing for an attorney: "...it cannot be said to be unreasonable or unfair to preclude the attorney relitigating an issue when precisely the same issue has been resolved against him in

another proceeding to which he was a party in which the standard of proof called for the highest quantum - beyond a reasonable doubt (cf. Matter of Lynch, 227 App.Div. 477, 480 -) and in which rigorous safeguards were imposed to insure against an unjust conviction (S.T. Grand, Inc. v. City of New York, 32 N.Y.2d 300, 304) (all emphasis added). Herein, of course,petitioner was not a party TO THE ACTION AT LAW WHERE HE WAS NOT PLAINTIFF NOR DEFENDANT! No guilty "finding" was articulated on proof "beyond a reasonable doubt." Not only were "rigorous safeguards" not interposed by Justice Klein, there simply were none - even absent adjectival support of "rigorous"! The unrebutted litany of total abnegation of all procedural, SUBSTANTIVE, Constitutional safeguards, where the "Order of Criminal Contempt" was fundamentally and jurisdictionally deficient

Kamp, Id., spoke unerringly of the underlying "motion" herein - the only Judicial act

by Justice Klein afforded petitioner - and the unconstitutional dishable the Court occasioned by his stealthy "ruling" and "finding" of criminal contempt against petitioner premised on nothing more than an oral argument before him:

> The appearance or non-appearance of the defendant in pursuance of a notice of motion for some order against him, could not and did not give the court jurisdiction, and certainly an appearance and contesting the right of the plaintiff to any relief in the proceedings, as was done here, did not give jurisdiction. (emphasis added) (59 N.Y.,at p. 216)
>
> ...
>
> The want of jurisdiction makes the order and judgment of the court, and the record of its action utterly void and unavailable for any purpose, and the want of jurisdiction may always be set up collaterally or otherwise. (. 212 of 59 N.Y.).
>
> ...judgments by courts having no jurisdiction are as no judgments; and bind no one. (emphasis added)

In the instant matter New York State Judiciary Law, Section 750-753 requires a full due process hearing to determine non-summary criminal contempt charges. In no other way can a court acquire jurisdiction to hear and resolve non-summary criminal contempt charges sought against one not a party to the underlying civil action as petitioner was herein. See, also, New York Civil Practice Law and Rules, Article 4; Douglas v. Adel, 269 N.Y. 144; Board of Education v. Zeluck, 60 Misc.2d 1090; Billingsley v. Better Business Bureau, 232 App.Div. 227, 249 N.Y.S. 584 (1st Dept. 1931), citing Pitt v. Davison, 37 N.Y. 235; CPLR 403(c)&(d).

Thus, without strictly adhering to the substantive and procedural requirements and safeguards as provided by New York State Law for bringing on a non-summary criminal contempt proceeding, no jurisdiction is obtained for the court to hear and determine, as it must, and no valid judgment can issue where a court, as herein, ruled in secrecy without even the pretense of honoring basic rights.

In the above instance, violence is done to the Due Process and Equal Protection of the Laws provisions of the United States Constitution. Bloom v. Illinois, 391 U.S. 192 (1968). The alleged conviction for non-summary criminal contempt cannot stand. Nor can the rulings of res judicata, collateral estoppel and full faith and credit remain herein. They have no jurisdictional or other indispensible legal basis upon which to adhere.

Had the District Judge followed Migra, supra, and had an indispensible HEARING, de minimus, he would have learned the criminal contempt "conviction" was barren of any Constitutional rights:

(a) Imprisonment without trial.

(b) No accusatory instrument.

(c) No evidence introduced.

(d) Conviction without any confrontation.

(e) Criminal "conviction" solely by affidavit.

(f) No personal jurisdiction obtained.

(e) No subject matter jurisdiction achieved.

(f) Criminal jurisdiction unlawfull asserted over a non-party to a civil proceeding, merely premised on an oral argument.

All of the above Rule Without Law was attained through active participation, guidance and conspiratorial joinder by Justice Alvin F. Klein, then a sitting Justice of New York State Supreme Court, County of New York.

THERE CAN BE NO JUDICIAL IMMUNITY NOR DERIVATIVE IMMUNITY FOR JUSTICE KLEIN AND THE PRIVATE-ATTORNEY RESPONDENTS FOR ACTS DONE OUT SIDE OF HIS JUDICIAL ORBIT, IN THE ABSENCE OF JURISDICTION AND FOR CRIMINAL ACTS DONE IN FURTHERANCE OF RICO VIOLATIONS OF USING THE NEW YORK SUPREME COURT AS A CRIMINAL ENTERPRISE

Justice Klein did not have subject-matter jurisdiction of the non-summary criminal contempt so-called "motion" placed before him. He knew this, as a matter of law, when the proceeding was initially brought before him. However, he proceeded to act outside of his judicial orbit by conspiring with respodents FKMF and Schneider to unlawfully jail petitioner because petitioner was the only honest person involved in the Puccini litigation. Petitioner was involved for a very limited amount of time and for a very limited purpose; to defend one trial for Raffe, as a substitute attorney for Sassower, before Justice Shackman of the New York County Supreme Court.

Thereafter, it was evident, petitioner as

vigorous plaintiff, was singled out by Klein, FKMF and Schneider and targeted for the unlawful contempt incarceration in order that they could continue, interupted, their criminal enterprise which included the legal extortion of Raffe. To this date Raffe has not been made to serve the 30 day jail term for which he was found guilty also of criminal contempt! Instead, FKMF, Schneider and the Kriendler & Relkin firm have extorted, allegedly as legal fees, some $2,500,000.00 from Raffe in order for Raffe to stay out of jail. RAFFE PAID SOME $2.5 MILLIONS. RAFFE STAYED OUT OF JAIL. THE "BARGAIN"WAS KEPT.

AS early as March 11, 1986, Justice Gammerman of the New York County Supreme Court issued an order that stated that any litigation filed in the name of Raffe or A.R. Fuels, Inc. by Sassower,did not have to be responded to by FKMF and Kriendler & Relkin, and were to be treated as if they were null and void as a matter of law. Nevertheless, these criminal attorneys continued to move for attorneys fees

for actions commenced by Sassower allegedly on behalf of Raffe and, as late as March 22, 1988, in a written opinion by defendant Diamond published in the New York Law Journal, stood to collect an additional $170,000.00 in legal fees for the same reasons.

To date, there has not been a court order permitting such larceny or permitting Raffe to remain free from serving the 30 day jail sentence for criminal contempt.

Justice Klein, in the criminal contempt matter, did not have subject-matter jurisdiction or in personam jurisdiction and therefore acted outside his judicial orbits in jailing petitioner and assisting in the extortion of Raffe through the use of his position as a New York State Supreme Court Justice. The extortion and decision to unlawfully jail Petitioner was done in secret, for which no immunity exists.

"A Judge's private, prior agreement to decide in favor of one party is not a "judicial act" for purpose of judicial immunity." Rankin v. Howard, 9th Cir., 633 F.2d 844 (1980).

In the present matter, Justice Klein's out-of-court agreement to find and hold petitioner in criminal contempt and jail him in order to extort funds from Raffe was clearly not a judicial function and does not merit judicial immunity. Likewise, Justice Klein's lack of jurisdiction to act upon the criminal contempt application, as well as the totally erroneous rulings made upon thát application, were brought to his attention numerous times. The law in regards to criminal contempt and the power relegated to him by statute in such a proceeding, was placed before Justice Klein time and time again. "Although a party conniving with a judge to predetermine the outcome of a judicial proceeding may deal with him in his 'judicial capacity', the other party's expectation, i.e., judicial impartiality, is actively frustrated by the scheme. In any event, the agreement is not 'a function normally performed by a judge.' It is the antithesis of the 'principled and fearless decisionmaking' that judicial immunity exists to protect." See Pierson v. Ray, 386 U.S. 547, 554(1967). Reliance is also had upon leading case,

Gregory v. Thompson, 500 F.2d at 63, cited in Ranking v. Howard, supra.

The Rankin Court dealt with Rankin's allegation that Judge Zeller agreed in advance with the other defendants to rule favorably on the petition. That Court concluded that a Judge' private, prior agreement to decide in favor of one party is not a judicial act. Rankin, at 847. That Court went on to hold that if the said agreement manifested Judge Zeller's participation in a conspiracy, then proof of the agreement could form the basis of liability whether or not he were immune from liability for subsequent judicial acts.

The Rankin Court also held: "An absence of personal jurisdiction may be said to destroy 'all jurisdiction' because the requirements of subject matter and personal jurisdiction are conjunctional. Both must be met before a court has authority to adjudicate the rights of parties to a dispute." Rankin, at 848. "If the court lacks jurisdicton over a party,

then it lacks 'all jurisdiction' to adjudicate that party's rights, whether or not the subject matter is properly before it." Rankin, at 848, and cases cited therein. "It is not sufficient that the court in fact lacked jurisdiction. Because jurisdictional issues are often difficult to resolve, judges are entitled to decide such issues without fear of reprisal should they exceed the precise limits of their authority." Rankin, at 849, citing Stump v. Sparkman, 435 U.S. at 356, 98 S.Ct. at 1104.

"But when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost." Rankin, at 849, citing Bradley v. Fisher, 80 U.S. (13 Wall.) at 351 ("When the want of jurisdiction is known to the judge, no excuse is permissible:"); (Stump is consistent with the view that " a clearly inordinate exercise of unconferred jurisdiction by a judge - one so crass as to establish that he embarked on it either knowingly or recklessly - subjects him

to personal liability")." If a judge's acts were part of a conspiracy, he is properly held responsible for the consequences. As the pleadings and other documents assembled during this litigation raise material issues of fact that were not fully considered by the Court below, summary judgment for the respondents was inappropriate. Rankin v. Howard, supra, at 849, citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970); Fed. R.Civ.P. 56(c).

Justice Klein lost his judicial immunity through his conspiratorial acts with respondents FKMF and Schneider to unlawfully jail petitioner in the clear absence of the jurisdiction to do so.

Moreoever, the dismissal of the case against Justice Klein's co-conspirators was error. Derivative immunity, mystifyingly, as was granted to FKMF and Schneider by the Courts below, was in error and contrary to ruling case law. Rankin v. Howard, supra, at 850, citing this Court in Dennis v. Sparks, spoke to the resolution of the derivative immunity question:

"The Supreme Court resolved the issue in Dennis v. Sparks, 449 U.S. 24 , 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). The Court held that an immune judge's private co-conspirators do not enjoy derivative immunity. 101 S.Ct. at 186. The Court observed that (i)mmunity does not change the character of the judge's action or that of his co-conspirators. Indeed, his immunity is dependent on the challenged conduct being an official act within his statutory jurisdiction, broadly construed. 449 U.S.,at27, 101 S.Ct. at 186 (footnote and citations omitted).

It follows that (p)rivate parties who corruptly conspire with a judge in connection with such conduct are ... acting under color of state law within the meaning of Sec. 1983. 449 U.S. at 28 , 101 S.Ct. at 187. Even if further proceedings establish Judge Zeller's immunity, Howard and Trauscht thus may be held liable." Rankin, supra, at 850 (emphasis added)

Thus, the acts of Judge Klein and FKMF and Schneider do not merit immunity of any sort and,

consequently, Judge Stanton's ruling and the ruling of the Court of Appeals must be overturned.

The New York State Supreme Court was being utilized as a means for Criminal Enterprise, and is still being utilized to effectuate these criminal acts of extortion of Raffe and no telling how many others. Obstruction of Justice in this State Court, Mail Fraud, RICO Violations are still pervasive and without restraint or Judicial oversight. These Federal Courts were likewise misused and mistreated herein.

This Court should further ponder: WHY DID NOT A SINGLE PUCCINI SHAREHOLDER RECEIVE FINANCIAL BENEFITS FROM THE LEGAL DISSOLUTION OF PUCCINI? THE RECORD APPEARS TO INDICATE THOSE ASSETS WERE DIVIDED AMONGST THE RECEIVER AND HIS LAWFIRM AS "LEGAL FEES"(SIC!).

It may well be a criminal act for the New York State Supreme Court to appoint a "Receiver" to oversee the dissolution and proper distribution of assets of a dissolved domestic corporation -- and have a Special Referee (Diamond) appointed who "approves" of the

"final accounting" (sic!) of said Receiver; one who gratuitously places an imprimatur of "regularity" on same, knowing it is done in virtual secrecy, is false and dishonest and a literal rape of the monies entrusted to the Receiver as fiduciary; all manipulated and contrived in violence to Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928) (Cardozo, J.), a classic case delineating that the trustee not trod the slippery slope(s) of insensitive betrayors of their cesti que trust.

This Court is pre-eminent in insuring the Judicial System be honored in its purest sense. The integrity of the Judiciary and trust and faith of the People in our Constitutional bulwark of Constitutional Limitations is the heart of this case. If an Attorney practicing since 1963 can be jailed and dishonored on a Judicial contrivance engineered by powerful and dishonest Lawfirms and individual lawyers with notorious political "clout", and millions of dollars are illicitely gained thereby, the issue obtrudes: Who then is safe!

This Court is respectfully urged to reverse the Courts below; to refuse to countenance such raw deprivation of the Judicial System and rending our Constitution impotent -- all to insure the integrity of the Judiciary and to redeem the trust and faith of the people in our Rule of Law.

Rulings of the Court below should be reversed and remanded. Thereby, this respected and honorable Attorney, veteran of Okinawa and Ie Shima campaigns as a private in the United States Army Engineers,at last have his Day in Court. The First Amendment commands it. Honor and Justice compel such ruling.

C O N C L U S I O N

IT IS RESPECTFULLY PRAYED THAT THIS COURT GRANT THE WITHIN PETITION FOR A WRIT OF CERTIORARI; AND THAT THE COURT GRANT ALL OTHER FURTHER AND DIFFERENT RELIEF IT DEEMS JUST AND APPROPRIATE IN THE PREMISES.

DATED: January 23, 1991

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